



**Q1 I think I have been unfairly dismissed but have heard I can't claim unfair dismissal unless I was continuously employed for more than a year prior to the dismissal. Is this correct?**

A1 Usually you do not have the statutory right not to be unfairly dismissed until you have been employed for one full year, without any breaks, however there are a number of exceptions to this rule so it is always worth taking legal advice. Exceptions include union related dismissals, health and safety related dismissals, dismissals for asserting certain statutory rights (including under the working Time Regulations and Tax Credits Act), maternity and paternity related dismissals, dismissals of pension trustees, employee representatives, European Works Council members and shop workers who refuse to work on Sundays, selection for redundancy on discriminatory grounds, dismissals on the transfer of an undertaking (including in-sourcing, out-sourcing, retendering, business sales, a key client moving their work etc), dismissals on the ground of a spent conviction, whistle-blowing related dismissals, and some union related dismissals.

Also there are other claims which can be brought within the first year of employment including breach of contract and discrimination claims (on the grounds of sex, race, disability, religion, sexual orientation, age or fixed term or part time employment status). Discrimination claims can arise in fact before any employment commences and even before it is offered e.g. where discrimination is alleged within the recruitment process.

If you have 51 weeks or more continuity of employment at dismissal it is worth taking legal advice, as sometimes where you are dismissed without notice, for the purpose of determining whether you have sufficient continuity to bring an unfair dismissal claim, your 1 week's statutory notice may be added to the length of your actual employment potentially extending your continuous employment over the next 1 year required to bring an unfair dismissal claim.

It is also worth taking urgent legal advice if you are notified of disciplinary proceedings or put at risk of redundancy when you are close to having the one year's continuity usually needed to found an unfair dismissal claim. It may be possible to delay the impending dismissal just long enough that you would qualify to bring a claim if the dismissal transpires to be unfair.



## **Q2 How long do I have to bring an unfair dismissal claim?**

A2 The claim must be filed with the appropriate Employment Tribunal within 3 months of the dismissal – not including the third month anniversary. Therefore if you were dismissed on 23<sup>rd</sup> May 2007 you would have until 22<sup>nd</sup> August 2007 to file your claim. This time limit is extremely strict and if missed even by a few minutes you risk your claim being time-barred, i.e. the Tribunal would not have the jurisdiction to hear your claim. This time period can be extended by a further three months where at the time it would otherwise expire you have grounds for reasonably believing an appeal against dismissal is still outstanding.

If you wish to bring an unfair dismissal claim it is advisable to take legal advice as early as possible and not to rely on the time for bringing the claim being extended – particularly as the employer could revert with the outcome of the internal appeal against dismissal on the final day of the initial 3 month limitation period and you might then only have the remainder of that day to file your claim. You may also have other related claims where limitation runs from an earlier date, e.g. in a discrimination claim limitation runs from the date of the act complained of, so you may be arguing your dismissal was unfair and discriminatory, but you may also wish to claim in respect of discriminatory acts which preceded the dismissal.

You may also need to send your employer a written grievance letter 28 days in advance of bringing these further claims, as an obligatory pre-cursor to the Tribunal having jurisdiction to entertain these further claims.



### **Q3 What procedure do employers have to follow in a dismissal situation?**

A3 For most dismissals employers are obliged to follow a three stage procedure to dismiss an employee in a way which is potentially fair. Firstly they should write to the employee setting out the grounds which are causing them to consider dismissal and inviting the employee to attend a meeting. Secondly the employer should then meet with the employee to discuss matters, before writing to confirm the dismissal (or other sanction) and thirdly the employee should be offered a right of appeal by a full rehearing.

A slightly different procedure involving collective consultation before individual consultation applies where 20 or more staff are being made redundant from one undertaking within a three month period.

In most cases where this procedure is not followed in full the employee will, if he or she has sufficient continuity of employment, have a claim for automatically unfair dismissal. The employee may be entitled to an uplift of up to 50% on any consequential damages an Employment Tribunal might award to reflect that the statutory dismissal and disciplinary procedure was not adhered to.

Where the procedure is followed the dismissal will be potentially fair if: -

- it if for one of the 5 potentially fair reasons for dismissal
  - Misconduct,
  - Capability (which includes performance and ill health),
  - Dismissal where continued employment would breach some other statute,
  - Redundancy, and
  - Some Other Substantial Reason (sufficient to warrant dismissal);

and it is

- procedurally and substantively fair. A Tribunal will ask itself whether the employer's response to the matters which caused it to consider dismissal (misconduct/underperformance/capability etc) was within the range of responses which might have been considered in that situation by a reasonable employer.



**Q4 Does an employer have to use the statutory disciplinary and dismissal procedure if the employee has been employed for less than 1 year?**

A4 There is no freestanding right of action for an employer not using the statutory procedure, so not using it only exposes the employer to a risk of claims or of having to pay an uplift if the employee is entitled to bring a claim in the first place. Mostly employees with less than a year's continuity of employment cannot bring unfair dismissal proceedings so many employers don't bother using the statutory procedures with these employees. This is unwise however because they may, unbeknown to the employer, have other claims e.g. discrimination claims and the employer risks increasing the size of the claim it faces by not following the statutory procedure.

The statutory disciplinary and dismissal procedure does not have to be used where an employer is only considering issuing a verbal or written warning and is not contemplating dismissing the employee or suspending the employee without pay.



**Q5 I have been called to a disciplinary meeting and have been told I may be accompanied by a colleague or union representative. I am not a union member and don't want to ask a colleague, can I take a friend or relative?**

A5 You can ask your employer but your legal entitlement is only to have a colleague or union representative accompany you so your employer can, and probably will, refuse your request.

Most employers will not permit you to be legally represented within internal grievance or disciplinary hearings, however there is still a lot we can do to assist you during internal proceedings, and the earlier you take legal advice the more we can do for you. We can assist in resolving your grievance or in averting a likely dismissal or downgrading the severity of other disciplinary sanctions being considered. In appropriate cases we can also try to negotiate severance terms whereby your employment might terminate with some compensation for the loss of your employment and an agreed form of reference, thereby avoiding the stigma of a dismissal which would have a more detrimental effect on your future employment prospects.



**Q6 I have been told I am at risk of redundancy and have a consultation meeting tomorrow. What should I ask?**

A6 You should ask about: -

- any thoughts you have had regarding ways in which your redundancy might be avoided e.g. losing any agency or temp workers or contractors first;
- the number of people being made redundant at your undertaking overall;
- the reasons for redundancies being considered;
- how you have been selected as being at risk;
- who else is in the same selection pool as you;
- how the employer proposes selecting which employees in the pool to retain and which it will make redundant (e.g. will it be last in first out?);
- whether a selection matrix is being used, and if so what your individual scores were;
- if you consider your scores were unfair or the selection criteria themselves are discriminatory you should challenge this (e.g. if attendance is a selection criteria maternity related absence, paternity leave, time off for family emergencies should be ignored and an extra "tolerance" might be allowed for some increased absence related your having a disability);
- whether the employer has any other positions available, and if so whether you might be considered for them, and if not why not.

You might also wish to ask what your entitlements will be if you are made redundant. Some employers will pay only statutory redundancy pay (see the calculator on the BERR website) plus your notice (which you may be required to work) whereas others are more generous.



**Q7 I have been given a Compromise Agreement and need to take legal advice on it. What is its purpose?**

A7 Sometimes in a redundancy or dismissal situation or in settling a grievance an employer may ask the employee to sign a Compromise Agreement. This is an agreement by which you may settle, waive or compromise any claims you may have against your employer/former employer. It will only be valid to prevent you from bringing proceedings against your former employer if you first take independent legal advice on the terms and effect of signing the agreement on any claims you may have. For this reason your employer may contribute towards the cost of your taking this advice. As well as explaining the terms of the agreement to you, your Solicitor should discuss what claims, if any, you may have to assist you in deciding whether the sums being offered under the Compromise Agreement are reasonable bearing in mind the prospects and value of any claims you may be giving up.